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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL BRIDGEFORTH,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0512-CR-749

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0410-FB-187208

August 23, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Michael Bridgeforth (Bridgeforth), appeals the trial court's revocation of his probation and imposition of his suspended sentence.

We affirm.

ISSUES

Bridgeforth raises two issues on appeal, which we restate as:

- (1) Whether the evidence was sufficient to sustain revocation of Bridgeforth's probation; and
- (2) Whether the trial court appropriately imposed Bridgeforth's one year suspended sentence.

FACTS AND PROCEDURAL HISTORY

On June 23, 2005, Bridgeforth pled guilty to one count of sexual misconduct with a minor as a Class D felony.¹ Pursuant to the plea agreement, the State agreed to dismiss four additional counts of sexual misconduct with a minor. According to the terms of the plea agreement, Bridgeforth was ordered to serve three years with one year suspended and one year of probation. A condition of probation was that he not commit a criminal offense.

On November 21, 2005, the State filed a Notice of Probation Violation alleging Bridgeforth committed criminal trespass November 11, 2005. On December 7, 2005, the State filed an amended Notice of Probation Violation alleging Bridgeforth committed criminal trespass on both November 11 and 23, 2005. A probation revocation hearing

¹ Ind. Code § 35-42-4-9.

was held December 9, 2005. The trial court found that Bridgeforth had committed both acts of criminal trespass, revoked his probation, and ordered him to serve his originally suspended one-year sentence.

Bridgeforth now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Bridgeforth first contends there was insufficient evidence to support revocation of his probation. Specifically, he contends that being arrested and charged with a crime does not support revocation of probation.

When reviewing a challenge to the sufficiency of the evidence supporting the revocation of probation, we apply the same standard used to determine any other sufficiency question. *Sutton v. State*, 689 N.E.2d 452, 454 (Ind. Ct. App. 1997), *reh'g denied*. We will not reweigh the evidence or assess the credibility of the witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028-29 (Ind. Ct. App. 2002). We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Alspach v. State*, 755 N.E.2d 209, 210 (Ind. Ct. App. 2001), *trans. denied*.

Probation revocation proceedings are civil in nature. *Thornton v. State*, 792 N.E.2d 94, 96 (Ind. Ct. App. 2003). Accordingly, the State must prove a violation of probation by a preponderance of the evidence. I.C. § 35-38-2-3(e); *id.* A trial court need find only one violation to support revocation of probation. *Thornton*, 792 N.E.2d at 96. If a person on probation commits another crime, the trial court may revoke probation.

I.C. § 35-38-2-1(b); *id.* Simply being arrested for a crime is insufficient to revoke a defendant's probation; rather, revocation requires proof that the defendant engaged in the alleged criminal conduct or proof of the conviction thereof. *Pitman v. State*, 749 N.E.2d 557, 560 (Ind. Ct. App. 2001), *trans. denied, reh'g denied* (citing *Gleason v. State*, 634 N.E.2d 67, 68 (Ind. Ct. App. 1994)). However, if the trial court, after a hearing, finds that the arrest was reasonable and there is probable cause to believe the defendant violated a criminal law, revocation will be sustained. *Pitman*, 749 N.E.2d at 560.

In claiming the State failed to prove he committed criminal trespass, Bridgeforth is inviting us to reweigh the evidence. We decline that invitation. The evidence presented at the probation revocation hearing established that Bridgeforth signed a trespass notification form indicating he understood entry by him onto any property owned by Cornerstone Properties constituted a trespass. Furthermore, Bridgeforth did not dispute his presence at the Phoenix Apartments, a property owned by Cornerstone Properties, on both November 11 and 23, 2005. As a condition of Bridgeforth's probation he was not to commit a criminal offense. Thus, we conclude there was sufficient evidence to support revocation of Bridgeforth's probation.

II. *Imposition of Suspended Sentence*

Next, Bridgeforth argues the trial court abused its discretion by ordering him to serve his suspended sentence. After the trial court revoked Bridgeforth's probation, it ordered that he serve his one year suspended sentence. Bridgeforth claims the nature and circumstances of his probation violation did not rise to the level of severity necessitating the imposition of a one-year jail sentence. We note that Bridgeforth provides no support

for this argument as required by Ind. App. R. 46 (A)(8), and thus deem it waived. Nevertheless, we will discuss the issue on its merits.

We review a trial court's decision to revoke probation and a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. Furthermore, we have previously held:

[I.C. § 35-38-2-3(g)] gives the trial court options upon finding that a defendant has committed a violation of his probation. The provision of these options by the statute implies that the trial court has discretion in deciding which option is appropriate under the circumstances of each case. As such, we will only review the trial court's decision for an abuse of discretion.

Id. at 957 (quoting *Johnson v. State*, 692 N.E.2d 485, 488 (Ind. Ct. App. 1998)). With respect to ordering the execution of a sentence that was suspended at the time of initial sentencing, “so long as the proper procedures have been followed in conducting a probation revocation hearing pursuant to I.C. § 35-38-2-3, the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence.” *Johnson*, 692 N.E.2d at 488 (quoting *Monday v. State*, 671 N.E.2d 467, 468 (Ind. Ct. App. 1996)). The condition that a probationer not commit an additional crime “is automatically a condition of probation by operation of law.” *Benton v. State*, 691 N.E.2d 459, 465 (Ind. Ct. App. 1998) (quoting *Atkins v. State*, 546 N.E.2d 863, 865 (Ind. Ct. App. 1989)).

Therefore, we must determine whether the circumstances surrounding Bridgeforth's probation violations make the trial court's decision to order he serve his

one year suspended sentence an abuse of discretion. *See Johnson*, 692 N.E.2d at 488. The facts, as set forth above, show that the trial court had ample basis for its decision to order that Bridgeforth serve his suspended sentence. *See Sanders*, 825 N.E.2d at 958. Particularly, the record shows Bridgeforth committed the same offense twice within the same month while on probation. Thus, we find the trial court did not abuse its discretion by ordering Bridgeforth to serve his one year suspended sentence.

CONCLUSION

Based on the foregoing, we find the evidence was sufficient to sustain revocation of Bridgeforth's probation and the trial court appropriately imposed Bridgeforth's one year suspended sentence.

Affirmed.

VAIDIK, J., and DARDEN, J., concur.